IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

THURSDAY, THE 28TH SEPTEMBER 2006 / 6TH ASWINA 1928

OP.No. 16391 of 1998(B)

PETITIONER:

R.SURESH, RESIDING AT RAMESH BHAVAN,
KAKKATHODE, PARA,
ELAPULLY P.O,
PALAKKAD DISTRICT

BY ADV. SRI.V.CHITAMBARESH
SRI.T.C.SURESH MENON

RESPONDENTS:
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1. **THE DISTRICT COLLECTOR,**
   PALAKKAD.

2. **THE TAHSILDAR (REVENUE RECOVERY),**
   PALAKKAD.

BY GOVERNMENT PLEADER SRI.P.A.SALIM

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 28/09/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

OP NO.16391/1998

ORDER IN C.M.P.NO.29191 OF 1998 IN O.P.NO.16391 OF 1998

DISMISSED

28/09/2006 **SD/-**
C.N.RAMACHANDRAN NAIR, JUDGE

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1: TRUE COPY OF THE NOTICE ISSUED BY THE FIRST RESPONDENT TO THE FATHER OF THE PETITIONER DATED 31.10.1992.

EXT.P2: TRUE COPY OF THE EXPLANATION SUBMITTED BY THE FATHER OF THE PETITIONER DATED 25.11.1992.

EXT.P3: TRUE COPY OF THE ORDER PASSED BY THE FIRST RESPONDENT TO THE FATHER OF THE PETITIONER DATED 4.1.1998.

EXT.P4: TRUE COPY OF THE WARRANT OF ARREST ISSUED BY THE FIRST RESPONDENT DATED 4.1.1998.

EXT.P5: TRUE COPY OF THE ORDER FOR DETENTION PASSED BY THE FIRST RESPONDENT DATED 25.7.1998.

//TRUE COPY//

C.N.RAMACHANDRAN NAIR, J.

O.P. NO.16391 OF 1998 B

Dated this the 28th day of September, 2006

J U D G M E N T

Petitioner, the son of the defaulter is challenging Exhibit P3 wherein the defaulter by name K.P.Ramesh is ordered to be arrested and retained in Civil Prison by the District Collector in exercise of the powers under Section 65 of the Kerala Revenue Recovery Act.

2. I have heard counsel for the petitioner and the Government pleader.

3. I have also gone through the impugned order. It is seen that liability sought to be recovered is Toddy Workers Welfare Fund and arrears are payable in respect of three toddy shops run by the defaulter during 87-88. Exhibit P3 discloses that the defaulter was name lender in the real business carried by one Mr.M.Chandran, who made some efforts to get defaulter released from prison when arrested. The finding recorded in Exhibit P3 is

that defaulter has one shop in 4 cents of land as he is a 1/6th share holder in 16 cents of property in Elappully Taluk. Defaulter has been represented by counsel and the District Collector granted last opportunity. The counsel even requested for two weeks time to make payment. In fact this court while admitting the original petition directed the release of the petitioners on payment of 1/3rd, which is paid. In view of the assets held by the petitioner and the payment already made, I am convinced that the defaulter has assets and the contractor for whom business was carried out by the defaulter as a name lender also appears to be willing to help the defaulter. Therefore, Exhibit P3 is upheld. However, in view of the delay in disposing the OP and in view of the payment of 1/3rd made, I waive 2/3rd of the interest, provided actual arrears with 1/3rd interest is paid before 31.3.07. If the petitioner undertakes payment by availing waiver as above, petitioner should give an undertaking within two weeks from receipt of judgment and furnish post dated cheque for the balance amount encashable on 31/3/07. If the petitioner does not furnish the undertaking and cheque as above, then the first

respondent will assume that petitioner does not want to discharge the liability even now, and will re-arrest and detain him in prison based on Exhibit P3.

O.P. is disposed of as above.

C.N.RAMACHANDRAN NAIR,
JUDGE

Rp